No. 81356-6

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

BIANCA FAUST, individually and as guardian of GARY C. FAUST, a minor, and BIANCA CELESTINE MELE, BRYAN MELE, BEVERLY MELE, and ALBERT MELE,

Petitioners,

v.

MARK ALBERTSON, as Personal Administrator for the ESTATE OF HAWKEYE KINKAID, deceased, MOOSE INTERNATIONAL, INC. and JOHN DOES (1-10),

Defendants,

and BELLINGHAM LODGE #493, LOYAL ORDER OF MOOSE, INC. and ALEXIS CHAPMAN,

Respondents.

ANSWER OF BELLINGHAM LODGE #493, LOYAL ORDER OF MOOSE, INC. AND ALEXIS CHAPMAN TO PETITION FOR REVIEW

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IDENTITY OF RESPONDENTS

Respondents are Bellingham Lodge #493, Loyal Order of Moose, Inc. and Alexis Chapman.

ISSUES PRESENTED FOR REVIEW

1. Whether the court of appeals correctly applied Washington Supreme Court precedent in ruling that petitioners failed to offer competent evidence that Hawkeye Kinkaid was apparently under the influence of alcohol at the time he was served at the lodge?

2. Whether petitioners have waived review by requesting interest at the rate about which they now complain, but in any event, whether Washington's adjustable interest-rate statute is rationally related to a legitimate state purpose?

STATEMENT OF THE CASE

Petitioners accuse the court of appeals of downplaying and ignoring facts (Pet. 3). Actually, petitioners have ignored many undisputed facts.

It is undisputed that Hawkeye Kinkaid entered the lodge at about 4:30 p.m. and had not been drinking earlier that day (RP 427-31, 1737-38). Respondent Alexis Chapman testified that she served Kinkaid two beers, the first around 4:30 p.m. (RP 444). Petitioners offered no evidence that anyone saw Kinkaid drink more than two beers or saw him drink any

other liquor. There was no evidence as to when Chapman served Kinkaid his second beer or as to Kinkaid's condition at that time.

Several witnesses saw Kinkaid at the lodge, but none testified that he appeared intoxicated. Chapman did not see him intoxicated, stumbling, slurring his words, or acting drunk (RP 396-97). John Liebrant saw no evidence that Kinkaid was under the influence of alcohol (RP 560). Frank Rose saw no signs of slurred speech, unsteady balance, or behavior nearing intoxication (RP 649-50). Eleanor Rose saw "nothing out of the ordinary" from Kinkaid (RP 1275). Larry Rayborn testified that Kinkaid did not appear intoxicated, and Ray Anderson testified that Kinkaid "acted perfectly normal to me" (RP 1298, 1321).

The lodge is located in Bellingham, but the accident happened just south of Ferndale, about seven miles and 14-17 minutes to the north (RP 919-20, 1238). It is undisputed that Kinkaid was driving south towards the lodge, not north toward Ferndale (RP 168-69, 1373-74).

Petitioners did not offer evidence that after Kinkaid left the lodge, witnesses observed him to be under the influence of alcohol. No one observed any behavior by Kinkaid at the accident scene. The medical examiner testified that Kinkaid was "essentially dead at the scene" (RP 186-87).

It is undisputed that Kinkaid was a very experienced drinker [Alexis Chapman: "[m]oderate to heavy" (RP 396); Lisa Johnston: "heavy" (RP 337-38): Rainy Kinkaid: "pretty heavy" (RP 280)]. At the scene, a police investigator found a 40 ounce, partially-empty liquor bottle on Kinkaid's front floorboard (RP 1378-79).

Based on the insufficiency of evidence of overservice, respondents moved for directed verdict at the close of all evidence (RP 1834). Although recognizing that "there isn't very much" observational evidence, the trial court denied the motion (RP 1840). Respondents re-raised the issue in their post-trial motion, but the court again rejected respondents' position (CP 839-40). However, the court admitted that "[w]without the statement of bartender Chapman [as testified by Rainy Kinkaid and Lisa Johnston], Defendant's motion would be granted . . ." (CP 840).

Based on the trial court's statement, the court of appeals focused on the testimony of Rainy Kinkaid and Lisa Johnston (A-9-13). Rainy Kinkaid is the daughter of Hawkeye Kinkaid. According to Rainy, she spoke to Chapman during funeral preparations for Kinkaid, and Chapman described Kinkaid's condition at the lodge. Rainy testified:

> A. That he was at the bar, that [Chapman and Kinkaid] were having an argument or not getting along or however you want to say it, and pretty much either she kicked him out or didn't want him there or told him to leave.

Q. And did she describe his condition when she told him to leave?

A. Yeah, she knew that he was tipsy, that he shouldn't be behind the wheel.

Q. What did she say to you?

A. She said that he had too much to drink, and shouldn't be driving. (RP 266).

Rainy testified that following Kinkaid's funeral, she had a second conversation with Chapman. It was "[p]retty much along the same lines" (RP 267). Rainy testified:

Q. And the second time that [Chapman] talked to you, did she again indicate what his condition was when he left the Moose Lodge?

A. Yes.

Q. And what did she tell you the second time?

A. That he had been drinking for quite a while?

Q. And what did she say in terms of his ability to operate a vehicle?

A. Drunk. (RP 267-68).

The court of appeals found Rainy's testimony to be insufficient because it concerned Kinkaid's condition when he left the lodge, not when Chapman served him (A-10-11).

Lisa Johnston was a former bouncer at a bar in Ferndale where Chapman had been employed (RP 331). Johnston testified to her conversation with Chapman:

> [Chapman] said that Hawkeye was sitting at the bar and he being obnoxious and that he was drunk, and she cut him off and he got mad.
>
> Q. And then what happened after she cut him off and he got mad?
>
> A. He left.
>
> Q. Did she indicate that she told him to leave?
>
> A. Yes.
>
> Q. And you're certain, though, that she did tell you that he -- she knew he was drunk?
>
> A. Yes. (RP 336-37).

The court of appeals ruled that Johnston's testimony provided "no insight into whether Kinkaid had been 'apparently' under the influence when he was served" (A-11). Moreover, Johnston's statements "support responsible behavior by Chapman — she cut him off when he became drunk and obnoxious" (A-11-12).

Applying the evidence to the law, the court of appeals ruled for respondents:

> The evidence relied upon by the trial court to deny a defense verdict does not appear to meet the standard required for liability based on a claim of overservice. This liability requires specific point-in-time evidence establishing "that person's appearance at the time the intoxicating liquor is furnished to the person." Purchase, 108 Wn.2d at 223. Here both Rainy and Johnston testified that Chapman admitted that Kinkaid was drunk when he left the Moose Lodge. This does not prove overservice. The trial court erred by relying on Chapman's statements,

> as related by Rainy and Johnston, as sufficient evidence to forestall a directed verdict. This evidence is not sufficient establish Kinkaid's appearance at the time of service of alcohol. Because "[t]he purpose of this provision is to protect against foreseeable hazards resulting from service to an intoxicated person," the duty only applies to the service of alcohol to those already exhibiting signs of the influence of alcohol. Dickerson, 62 Wn. App. at 435. The Lodge cannot beheld liable when a patron is not "apparently under the influence" when served. As long as Chapman did not serve Kinkaid after he "appeared" under the influence, neither she, nor the lodge, are liable for the Fausts' injuries. Since, no evidence describes Kinkaid's state when Chapman served him, substantial evidence does not support the jury verdict against Moose Lodge and Chapman for overservice (A-12; emphasis in original).

The court reversed the judgment against respondents and affirmed the judgment against Kinkaid's estate (A-11-12). Petitioners now ask this Court to reinstate the judgment against respondents.[1]

As to petitioners' position regarding the interest statute, petitioners requested interest under the statute they now challenge as unconstitutional, and they requested the precise rate awarded (CP 1080-82). They did not raise in the trial court a constitutional challenge to the statute.

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[1] Based upon its ruling, the court of appeals did not reach four issues of trial error: (1) the use of the deposition and ex-parte declaration of Ron Beers, (2) the questioning of defense witness Mack Pope in the jury's presence about drinking prior to testifying, (3) the admission of evidence unfairly impugning the integrity and credibility of respondents and their lawyers, and (4) rulings on instructions. Petitioners have not raised these issues in their petition, and respondents do not do so now. If this Court reverses the court of appeals' judgment, the case must be remanded to the court of appeals for resolution of those issues.

REASONS FOR DENYING THE PETITION

I. The Court Of Appeals Correctly Applied Supreme Court Precedent In Holding That Petitioners Failed To Prove Overservice.

The court of appeals did not ignore the JMOL standard (Pet. 7-8; A-4-5). It viewed the evidence in petitioners' favor but correctly refused to give weight to evidence not competent to prove overservice. CR 50(a)(1) ("legally sufficient" evidence needed); *Guijosa v. Wal-Mart Stores, Inc.*, 144 Wn. 2d 907, 32 P.3d 250, 254 (2001) (evidence must be "competent and substantial"). Review is not warranted.

A. This case presents neither a question of first impression nor an issue of substantial public interest needing this Court's review.

Petitioners posture this case as raising a question of first impression under *Barrett v. Lucky Seven Saloon, Inc.*, 152 Wn. 2d 259, 96 P.3d 386 (2004) (Pet. 9). They also claim that it raises a question of "substantial public interest that should be determined by the Supreme Court" [Pet. 14-15 citing RAP 13.4(b)(4)]. There is no question of first impression, and this Court has resolved the raised question several times — all adversely to petitioners' position.

In a DUI case, a victim may prove intoxication based on evidence of blood alcohol content (BAC) or may otherwise create inferences of

intoxication. RCW 46.61.506(1); *State v. Charley*, 136 Wn. App. 58, 63, 147 P.3d 634, 636 (2006). But this is not a DUI case. It is an overservice case governed by a different rule of law, one that the court of appeals correctly applied.

Petitioners' reliance on *Barrett* is misplaced because the *Barrett* issue has limited applicability here. *Barrett* addressed an issue regarding the level of intoxication needed in overservice cases. At issue was whether a patron must have been "obviously intoxicated" or merely "apparently under the influence" of alcohol when served. This Court adopted the latter standard, and the court of appeals applied it. 152 Wn.2d at 273-275, 96 P.3d at 392; (A-6 n.3).

But *Barrett* did not change long-standing Washington law as to the manner in which overservice is proven. Time and again this Court has required proof by direct observational evidence, rejecting BAC and other circumstantial evidence as proof of overservice. In *Shelby v. Keck*, 85 Wn. 2d 911, 541 P.2d 365, 368-69 (1975), the Court stated:

> It is our considered opinion that one ***cannot logically or reasonably infer*** that Keck was intoxicated merely from the fact that he was in the establishment for several hours. Even if Keck had consumed more than two drinks, his state of sobriety ***must be judged by the way he appeared to those about him, not by what a blood alcohol test later revealed.*** (emphasis supplied).

In *Wilson v. Steinbach,* 98 Wn. 2d 434, 656 P.2d 1030, 1033 (1982), the Court reaffirmed *Shelby* as stating "[t]he settled rule in this state as to actions based on the *Halvorson* [overservice] line of cases. . . ."

In *Purchase v. Meyer*, 108 Wn. 2d 220, 737 P.2d 661 (1987), the Court repeated its prohibition against using BAC evidence and circumstantial evidence to prove overservice. A minor was involved in a vehicle accident after consuming more than two drinks at a restaurant. A breath test almost four hours after the accident showed that the minor had a 0.13% BAC. Nothing "suggest[ed] that anyone who saw [the minor] at the El Torito believed that she appeared intoxicated." 108 Wn. 2d at 227, 737 P.2d at 663. The trial court denied El Torito's motion for summary judgment.

This Court reversed. It stated:

> CONCLUSION. Insofar as a cause of action for furnishing intoxicating liquor to an "obviously intoxicated" person is concerned, ***the results of a blood alcohol test (by an alcohol blood testing machine) and an expert's opinions based thereon, and the physical appearance of that person at a substantial time after the intoxicating liquor was served***, are not by themselves sufficient to get such a cause of action past a motion for summary judgment. Whether a person is "obviously intoxicated" or not ***is to be judged by that person's appearance at the time the intoxicating liquor is furnished to the person.***

108 Wn. 2d at 233, 737 P.2d at 663 (emphasis supplied). The court rejected alcohol testing evidence as "***not competent evidence*** against El

Torito." *Id.* at 226, 227, 737 P.2d at 665 (emphasis supplied). It also rejected toxicological evidence like that presented in this case:

> The pharmacologist's affidavit purporting to relate Meyer's blood alcohol content to what it was when she was last served at the El Torito, and then from that to determine what he claims was the "obviousness" of her intoxication at the time of the last serving, is based entirely on the ***inadmissible alcohol breath testing results. It suffers from the same legal infirmities as the test results and is speculative.*** Thus there was ***no competent evidence in the record*** to establish that Meyer ***appeared "obviously intoxicated" to those around her when she was served at the El Torito.***

Id. at 226-27, 737 P.2d at 665 (emphasis supplied).

In *Christen v. Lee*, 113 Wn. 2d 479, 780 P.2d 1307 (1989), this Court again recognized that someone must observe a drinker's appearance to establish that he was served while apparently intoxicated. Plaintiff was shot just after leaving a bar. Plaintiff's assailant had been drinking in the bar and left with the plaintiff. A former bar employee testified that the assailant was intoxicated while at the bar "based solely on the amount of alcohol she saw him consume, not on his actual appearance." 113 Wn. 2d at 489, 780 P.2d at 1312. No evidence existed that he "actually appeared intoxicated to others around him." *Id.* The trial court granted summary judgment for the bar owner.

The Supreme Court upheld it. The Court stated:

> In *Purchase*, we articulated several reasons ***why resort must be had to evidence of a person's appearance in order***

> ***to determine whether that person was obviously intoxicated.*** First, we noted that a furnisher of intoxicating liquor ordinarily has no way of knowing how much alcohol a person has consumed before entering an establishment. Next, we observed that a person who is a heavy drinker may be legally intoxicated yet still not appear intoxicated. Finally, we explain that there are medically recognized variables in the way that alcohol may react on the human body.

Id. at 489, 780 P.2d at 1311 (emphasis supplied). The Court ruled that there was no direct evidence that the patron was served while appearing intoxicated:

> It is [the bar employee's] testimony that she thought [the assailant] was intoxicated, ***but her conclusion was based solely on the amount of alcohol she saw him consume, not on his actual appearance***. In fact, [she] denied that [the assailant] appeared intoxicated. ***There is no evidence in the record to the effect that [the assailant] actually appeared intoxicated to others around him***. We conclude, therefore, that there is insufficient evidence to raise an issue of fact as to whether [the assailant] was obviously intoxicated ***when served at the China Doll.***

113 Wn. 2d at 289-90, 780 P.2d at 1312 (emphasis supplied).

These cases — none of which petitioners mention — control the analysis. The time spent in a bar and number of drinks served do not create a reasonable inference that a drinker was apparently intoxicated when served. *Shelby*, 85 Wn. 2d 911, 541 P.2d at 368-69. Neither does a drinker's BAC at the time of an accident. *Purchase*, 108 Wn. 2d at 223, 226-27, 737 P.2d at 663, 665. So petitioners' BAC evidence proved

nothing as to overservice. Even the trial court found that petitioners' BAC evidence did not create a jury question (CP 839-40).

The court of appeals focused on the evidence relied upon by the trial court (A-9-13). Rainy Kinkaid and Lisa Johnston, neither of whom saw Kinkaid, testified to their conversations with Chapman about Chapman's observations. The point-in-time of those observations is critical. Rainy testified to Chapman's observation of Kinkaid's condition "when [Chapman] told him to leave" and "when he left the Moose Lodge" (RP 266, 267-68). Johnston testified to Chapman's observation of Kinkaid's condition when Chapman "cut him off and he got mad" and "left" (RP 336). Their testimony did not concern Kinkaid's condition at the time of service — the time fixed by *Shelby*, *Wilson*, *Purchase,* and *Christen*.

Petitioners wrongly accused the court of "pars[ing]" Kinkaid's appearance when he left the lodge from his appearance when served (Pet. 13). But petitioners offered no evidence that Kinkaid was served so close in time to leaving the lodge that overservice may be inferred. Chapman testified that she served Kinkaid two bottles of beer (RP 444). No witness at the lodge disagreed. She served the first beer around 4:30 p.m. (RP 431-35). Petitioners did not offer evidence as to when she served the second beer or as to Kinkaid's condition at time of service. Kinkaid may

have been served the second beer well before he fully absorbed the alcohol from the first. Petitioners' own expert admitted that a body needs one hour to fully absorb alcohol into the bloodstream (RP 227). And Kinkaid may have been served both beers well before he left. In short, petitioners offer no evidence upon which a reasonable jury could link the times of service and departure and so infer overservice.

Petitioners argue that the requirement of observational evidence is unfair here because lodge members had motive to lie (Pet. 14). That argument does not support review, much less reversal. In *Wilson v. Steinbach,* 98 Wn. 2d 434, 656 P.2d 1030 (1982), petitioners' decedent was killed after drinking at a party hosted by respondents, the parents of decedent's fiancée. Respondents filed a motion for summary judgment supported by the affidavits of themselves and their son. Affiants stated that decedent did not appear intoxicated. Petitioners filed a counter-affidavit failing to contradict that fact. The trial court granted respondents' motion for summary judgment, and this Court affirmed. Although respondents arguably had motive to lie, the Court did not discount respondents' affidavits. The Court affirmed summary judgment because petitioners lacked evidence of overservice. And that is true here.

Considerations regarding a motive to lie are irrelevant here. Credibility is a factor only once a dispute exists as to the facts. If the facts

are undisputed, judgment may not be denied based on speculation that a witness may not be credible. Under petitioners' logic, a judgment as a matter of law could rarely be granted. That is not the law, nor should it be.

The court of appeals' analysis does not encourage overservice (Pet. 15). Nor do the analyses in *Shelby*, *Wilson*, *Purchase* and *Christen*, all of which petitioners ignore. Liability must be based on proof of service to a person visibly under the influence, not on assumptions about the effects of alcohol on an average drinker. The Supreme Court has resolved the issue here. Petitioners simply do not like the result. That is not a valid basis to overturn the law or obtain review.

B. The court of appeals' decision does not conflict with the case law.

The decision does not conflict with *Dickinson v. Edwards*, 105 Wn. 2d 457, 716 P.2d 814 (1986). Contrary to the petition, under *Dickinson* BAC evidence is not admissible as evidence of "intoxication at the time a person was served" (Pet. 10). It is evidence of intoxication "at the time of the accident." 105 Wn. 2d 457, 716 P.2d at 817. *Dickinson* merely held that when an accident occurs "a very short time" after service, observations of the drinker after the accident may create an inference of overservice. *Id.* at 817-18. But if a drinker consumed alcohol after last

service or if an unaccounted period of time remained between service and the accident, no inference may be drawn. *Id.* at 818. In *Dickinson*, a drinker admitted to drinking 15-20 whiskeys in three hours at a banquet hall. He drank until he left. The accident happened five minutes later, and within another five minutes a police officer observed that he was "unsteady on his feet, had bloodshot eyes and a flushed face, and smelled of alcohol" *Id.* at 816. He also failed a physical test. *Id.*

In three Supreme Court cases, *Dickinson* has been labeled "factually unique." *Christen*, 113 Wn. 2d at 490, 780 P.2d at 1312; *Purchase*, 108 Wn. 2d at 227-28, 737 P.2d at 665; *Burkhart v. Harrod*, 110 Wn. 2d 381, 392, 403, 755 P.2d 759, 764, 770 (1988) (Utter and Brachtenbach, J.J., *concurring*). It is far different from this case. Kinkaid did not testify about his drinking at the lodge, and observers only saw him drink two beers. No witness observed conduct by Kinkaid after the accident that would manifest signs of apparent intoxication. Kinkaid was "essentially dead at the scene" (RP 186-87). Besides, at the time of the accident, Kinkaid was about seven miles north of the lodge and driving toward it (RP 168-69, 919-20, 1238, 1373-74). And he was driving with a 40 ounce partially-empty liquor bottle in his vehicle (RP 1378-79). These facts would prevent any inference of overservice. *Dickinson* does not help petitioners.

Likewise distinguishable is *Fairbanks v. J.B. McLoughlin Co.*, 131 Wn. 2d 96, 929 P.2d 433 (1997). A patron was involved in a car accident 20 minutes after leaving a banquet. Ten minutes later, an investigating officer testified that she "smelled of alcohol, slurred her speech, stumbled as she got out of the car and staggered when she walked." 131 Wn. 2d 96, 929 P.2d at 436. Relying on *Dickinson*, the Court stated that the officer's observations in close proximity to the drinker's departure from the banquet raised an inference of intoxication at the time of service. Unlike *Fairbanks*, petitioners here offered no observational evidence of Kinkaid's post-lodge conduct from which overservice may be inferred.

Also distinguishable is *Cox v. Keg Restaurants U.S., Inc.*, 86 Wn. App. 239, 935 P.2d 1377 (1997), where defendant continued to serve a visibly belligerent patron. Eight witnesses testified to their first-hand observations of the patron's inappropriate conduct. Under those circumstances, the trial court did not abuse its discretion by admitting BAC evidence enhancing the credibility of witness observations. 86 Wn. App. at 248-50, 935 P.2d at 1382-83. Those are not the facts here.

In short, the case law does not conflict with the decision. RAP 13.4(b)(1) and (2). There is no reason to grant review as to the overservice issue.

II. Petitioners' Constitutional Issue Does Not Merit Review.

Not every constitutional issue is substantial, and some are not even real. Petitioners' argument about the constitutionality of the interest statute is neither.

Petitioners ignore the facts. They asked for the precise rate of interest awarded by the court (CP 1080-82). The invited error doctrine " 'prohibits a party from *setting up an error* at trial and then complaining of it on appeal.' " *In re Personal Restraint of Thompson*, 141 Wn. 2d 712, 723-24, 10 P.3d 380, 386 (2000) (emphasis in original). RAP 2.5(a)(3) does not save the petition. The rule must be narrowly construed and was never intended to correct "every possible constitutional error." *State v. McFarland*, 127 Wn. 2d 322, 333, 899 P.2d 1251, 1255-56 (1995) (warrantless arrest). And an error must be one that had the consequence "in the trial of the case." *State v. WWJ Corp.*, 138 Wn. 2d 595, 603, 780 P.2d 1257, 1261 (1999); *McFarland*, 127 Wn. 2d at 333, 899 P.2d at 1256 ("in the context of the trial"). Petitioners' issue does not meet these standards.

By considering the interest issue even after ruling for respondents, the court of appeals did not elevate the issue to one of public significance (Pet. 16 n. 8). The court may have decided the issue because of its impact

on Kinkaid's estate, against which judgment had been affirmed (A-13). Nothing may be presumed about the importance of the issue from the court's consideration of it.

By arguing that RCW 4.56.110 "inexplicably require[s] a lower interest rate" for tort judgment creditors, petitioners misread the statute (Pet. 18). RCW 4.56.110(3) awards interest to tort judgment creditors at a flexible rate tied to the federal treasury bill rate. Depending upon the applicable federal rate, the state judgment rate for tort creditors may exceed the 12% rate for child support creditors. RCW 4.56.110(2). It may also exceed the rate available to contract creditors. RCW 4.56.110(1). So petitioners' argument about a lower rate is based on a faulty premise.

Moreover, equal protection " 'does not require that things different in fact be treated in law as though they were the same.' " *Petersen v. State*, 100 Wn. 2d 421, 671 P.2d 230, 245 (1983). A legislative solution may proceed " 'one step at a time,' " and the legislature " 'may select one phase of one field and apply a remedy there neglecting the others.' " *DeYoung v. Providence Medical Center*, 136 Wn. 2d 136, 149, 960 P.2d 919, 925 (1998). The legislature focused on tort creditors, who generally receive more, even millions more, than child support and contract creditors. Because of the large sums involved in tort judgments, an

interest rate not keyed to economic conditions would effectively deprive losing parties of their appeal rights (*See* House Bill Report HB 2485 at 3) (A-14). By contrast, fixing the child support rate at 12% aids minors in receiving prompt payment from parents. Contract creditors continue to receive interest at rates agreed upon in advance. The classifications are neither irrational nor arbitrary.

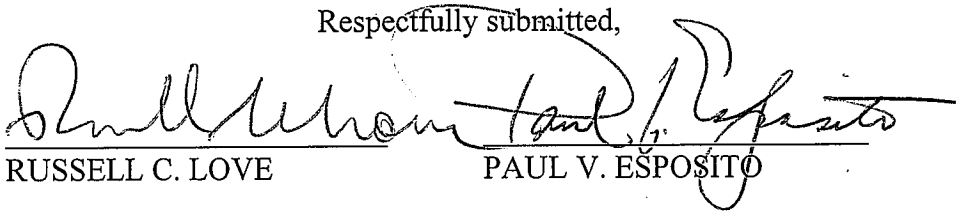
Petitioners' cases are distinguishable. None involves the interest statute here or a similar statute.

Petitioners' constitutional argument does not warrant review. Petitioners have not even made a *prima facie* showing that the statute is unconstitutional beyond a reasonable doubt. *State v. Thorne*, 129 Wn. 2d 736, 769-70, 921 P.2d 514 (1996).

CONCLUSION

For the foregoing reasons, respondents ask this Court to deny the Petition For Review.

Respectfully submitted,



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DECLARATION OF SERVICE

On said day below I deposited in the United States mail a true and accurate copy of the following document: Answer Of Bellingham Lodge #493, Loyal Order Of Moose, Inc. And Alexis Chapman To Petition For Review, to the following:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Dated this 2nd day of April, 2008 at Chicago, IL

JoAnne Kool

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